

REMARKS

Claims 1-62 are pending in this application. Claims 1-62 are rejected. No claims or new matter has been added. Claims 1, 24, 33 and 43 have been amended to clarify the network as a *packet switched* network. Reconsideration of the claims is requested in view of the following remarks.

Claim Rejections – 35 USC § 103

Schuster in view of Williams: Claims 1-6, 8, 10, 14-16, 24-27, 30, 33-36, 43-48, 49, 51 and 54-57

Claims 1-6, 8, 10, 14-16, 24-27, 30, 33-36, 43-48, 49, 51 and 54-57 are rejected under 35 USC 103(a) as being unpatentable over U.S. Pat. No. 6,170,075 B1 to Schuster ("Schuster") in view of U.S. Pat. No. 5,914,956 to Williams ("Williams").

Claim 1 is restricted to a method comprising:

- a first device establishing a connection with a second device through a packet switched network according to a packet network communication protocol;
- the first device transmitting to the second device original voice data in original packets through the connection;
- detecting the connection is under utilized;
- if the connection is underutilized, generating redundant data by replicating the original voice data; and
- adding at least some of the redundant data to the original packets.

Schuster discusses a method and apparatus for improving the speed and quality of end-to-end data or real-time media transmissions over an internet (Abstract). Furthermore, Schuster involves a media stream being transmitted to the internet with channel coding at the edge of the internet in order to free upstream bandwidth for use in source coding the media. The channel coded media stream is then decoded at a remote edge of the internet to recover lost packets. Schuster therefore deals with channel coding the packet data without channel coding the data over a link to the Internet, such as a high reliability low bit-rate channel like a telephone line. Schuster does not teach generating redundant data by replicating original voice data if a connection is detected as under utilized.

Williams discusses a cache apparatus and method for improving the connection capacity of an Asynchronous Transfer Mode (ATM) switch. Particularly, the cache updates the ATM switch with information for configuring connections while maintaining a separate connection table. Incoming data cells are examined by a cell router and routed either directly

to the switch, if a connection is already configured, or to a cell holding area while the connection is being set up in the switch. Unused or underused connections are detected in the connection table by a reclaim ager and marked underused. An updater then reviews the connection table to use the connection resources represented by the underused connections for configuring connections for the data cell stored in the cell holding area.

M.P.E.P 2141.02 requires that to ascertain the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole. Section 2141.02 further requires that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Furthermore, M.P.E.P. 2143 requires that the proposed modification cannot change the principle of operation of a reference. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

A cache apparatus and method for improving the connection capacity of an Asynchronous Transfer Mode (ATM) switch would change the principle of operation of Schuster. ATM creates a fixed channel between two points at the beginning of a data transfer. This differs from TCP/IP (and packet switched networks), where messages are divided into packets and each packet can take a different route from a source to a destination. Therefore, the proposed modification would render the prior art unsatisfactory for its intended purpose. More particularly, Schuster explicitly states its field of the invention relates to a method and apparatus for improving data communications through a packet switched network. Incorporation of a cache for improving the connection capacity of a fixed channel communications switch (ATM) would change the principle operation of a packet switched network.

Applicants therefore respectfully submit that a *prima facie* case of obviousness has not been met under M.P.E.P 2143 and claim 1 is patentably distinguishable over the prior art.

Schuster in view of Williams in General

Applicants respectfully submit that independent claims 24, 33 and 43 contain similar limitations and therefore are patentably distinguishable over the prior art as all were rejected with Schuster in view of Williams and Pandula, Tsunoda, Dedrick and Sidhu do not cure the

deficiencies of Schuster. Claims 2-23 depend from claim 1, claims 25-32 depend from claim 24, claims 34-42 depend from claim 33 and claims 44-62 depend from claim 43. Since all dependent claims contain the same limitations as claims from which they depend, a prima facie case of obviousness has not been met for any of the pending claims and claims 1-62 are in condition for allowance. Applicants therefore respectfully submit that a prima facie case of obviousness has not been met for every rejection in the office action dated 6/03/05.

CONCLUSION

For the foregoing reasons, reconsideration and allowance of claims 1-62 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Customer No. 20575

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Julie L. Reed

Julie L. Reed
Reg. No. 35,349

MARGER JOHNSON & McCOLLOM, P.C.
210 SW Morrison Street, Suite 400
Portland, OR 97204
503-222-3613

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (571) 273-8300, on September 6, 2005.

Signature

Judy Wigmore
Judy Wigmore